NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA , Plaintiff - Appellee, v. JEREMIAH SKIDMORE, Defendant - Appellant.	No. 04-35738 D.C. Nos. CV-04-00101-RFC CR-01-00067-RFC MEMORANDUM[*]

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, District Judge, Presiding

Submitted December 5, 2005 [**]

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

Jeremiah Skidmore appeals the district court's denial of his 28 U.S.C. § 2255 motion challenging the sentence imposed following his conviction on a single

[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

[**] This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

count of conspiracy against the rights of citizens in violation of 18 U.S.C. § 241. We have jurisdiction pursuant to 28 U.S.C. § 2253.

Skidmore contends that his Sixth Amendment rights were violated because his sentence was enhanced on the basis of several facts found by the District Court Judge by a preponderance of the evidence, that were neither charged in the indictment nor proven to a jury beyond a reasonable doubt. A limited Certificate of Appealability was granted on the issue of whether *Blakely v. Washington*, 542 U.S. 296 (2004), should be applied retroactively to cases on collateral review. This court has foreclosed the retroactive application of *Blakely*. *See United States v. Cruz*, 423 F.3d 1119, 1120 (9th Cir. 2005) (per curiam) (holding that neither *Blakely* nor *United States v. Booker*, 125 S. Ct. 738 (2005), applies retroactively to cases on collateral review).

We decline to expand the Certificate of Appealability because Skidmore has failed to make a "'substantial showing of the denial of a constitutional right,'" *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003), *quoting* 28 U.S.C. § 2253(c), and has not demonstrated that "reasonable jurists would find the District Court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

AFFIRMED.